

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 8TH DAY OF JUNE 1998

BEFORE

THE HON'BLE MR. JUSTICE TIRATH S. THAKUR

WRIT PETITION NO. 20283/1991

BETWEEN:-

Sri Panchalingeshwara Vidya
Samsthe (Regd) Keragodu,
Mandya District & Taluk

Represented by its Secretary
Sr Ramakrishnegowda.

..PETITIONER

(By Sri H.V.Nagaraj Rao, Advocate)

AND:-

1. The Director Registrar
Mandya District,
Mandya.
2. Smt. M. Rajalakshmi
W/o Panchalingaiah
Major in age
residing at Keragodu Town
Mandya Taluk & District.

..RESPONDENTS

(By Sri N.K. Ramesh, AGA for R1)

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This Writ Petition filed u/a 226 & 227 of the Constitution of India praying to quash Annexure-A dt. 20.3.91 bearing No. Sankhye: Itare: 125:90-91 passed by R1 and etc.

This Writ Petition coming on for hearing, this day, the Court made the followings:-

O R D E R

The controversy in this writ petition pertains to the management of an educational institution established by Sri Panchalingeshwara Vidya Samsthe, a Society registered under Karnataka Societies Registration Act, 1960. Two rival groups claim to be simultaneously in control of the affairs of the society, one represented by Sri. Ramakrishnegowda and the other represented by respondent No. 2, Smt. M. Rajalakshmi each one of whom claims to be the duly elected secretary of the society. The Registrar of Societies by order dated 20.3.91 appears to have recognised the 2nd respondent as the lawfully elected secretary of the society and directed Sri. Ramakrishnegowda to handover the charge thereof to her. Aggrieved, the petitioner has filed the present writ petition assailing the validity of the said order inter alia on the

ground that the Registrar had not conducted any enquiry whatsoever before issuing the said direction nor was the petitioner afforded any opportunity of being heard in support of his claim that he was the real secretary of the society.

2. Heard.

3. The respondents have not satisfactorily demonstrated that any enquiry was at any stage conducted by the Registrar prior to the issue of the impugned direction. The direction is therefore, on the face of it exparte without any notice to the petitioner and without disclosing the basis on which the 2nd respondent was recognised as the Secretary of the society. That being so, it is difficult to sustain the said direction.

4. Counsel for respondent No. 2 however submitted that the Registrar could be given an opportunity to initiate a proper enquiry into the matter and to return a fresh finding as to whether Ramakrishnagowda or the 2nd respondent is the Secretary of the Society. This course was not according to counsel for the

petitioner permissible, according to whom, the 2nd respondent having filed and failed in 4 different suits in the Courts below, there was no room for any further enquiry into her claim. He submitted that the 2nd respondent had filed O.S.Nos. 157/86, 218/87, 344/87 and 676/90 in which she had claimed herself to be the legally elected secretary of the society, but which claim was upon trial negatived by the Court below. He urged that the finding returned by the Courts below was binding upon the 2nd respondent making it unnecessary ^{for} the Registrar to hold any further enquiry into that aspect.

5. On behalf of the 2nd respondent it was contended that the judgments and decrees passed in the suits mentioned above, were presently under challenge before the Civil Judge, at Mandya. It was urged that in the light of the pendency of the said appeal, the findings returned by the Trial Court could not be said to have attained finality. It was further contended that in order to prevent any confusion or conflict in the findings returned by the Civil

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Courts and that which the Registrar may return under Sec. 25, the 2nd respondent was prepared to withdraw the suits themselves and subject herself to the jurisdiction of the Registrar unconditionally. To facilitate this, counsel for the 2nd respondent has filed a memo in which unconditional withdrawal of the suits has been assured. In that view therefore, I see no possibility of a conflict in the findings already returned or those that may have been returned by the Civil Court on the one hand and the view that the Registrar may take under Sec. 25 on the other. In the light of the undertaking given by counsel for the 2nd respondent, the suits filed by the said respondent presently in appeal before the Appellate Court below, shall stand withdrawn unconditionally. An appropriate application shall be made by him to that effect within 4 weeks from today. Immediately after the withdrawal of the said suits, the Registrar can initiate an appropriate de-novo enquiry into the question of the management of the society being with one or other group of Members, uninfluenced by the findings that had been recorded by the Civil

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Court in the suits filed by the 2nd respondent,
In the result I make the following order:

- a) Order dt. 20.3.91, Annex-A to the writ petition shall stand quashed.
- b) The Dist. Registrar of Co-operative Societies Mandya shall hold an appropriate enquiry into the rival claims made by the two groups and record a finding as to who was as on the date of passing of the impugned order, who was in actual managing control of the society.
- c) In case the Registrar upon enquiry comes to the conclusion that the term of office of the elected office bearers of the Society in charge of the society has expired, he shall also take steps to ensure that fresh elections are held in accordance with the Rules expeditiously and shall supervise the holding of such election to ensure that a duly elected team of

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office bearers is placed in charge
of the management and control of
the society.

In the circumstances, however, the parties
are left to bear their own costs.

Sd/-
JUDGE

sac/

hba/

